

***United States Court of Appeals
for the Second Circuit***



JOINT APPENDIX

77-4010

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JACOB GOLDBLATT,

PETITIONER,

V.

SECRETARY OF LABOR,

RESPONDENT.

ON PETITION FOR REVIEW OF THE NEGATIVE
DETERMINATION OF THE SECRETARY OF LABOR

JOINT APPENDIX

Jacob Goldblatt, Petitioner
46 Grace Ave.
Great Neck, N.Y. 11021
Telephone: (516) 482-2079

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P/S

PAGINATION AS IN ORIGINAL COPY

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U.S. Department of Labor

PETITION FOR ADJUSTMENT ASSISTANCE

OMB 44R 1598
Exp. Sept. 1980

This is a petition under Section 221(a) of the Trade Act of 1974 and Subpart B of Part 90 of the Rules of Practice of the Secretary of Labor.

- I. State the name, address and telephone number of each petitioner and the group of workers on whose behalf the petition is filed. (For each petitioner who is a worker and who is not currently employed at the firm, give the date of his most recent total or partial separation from the firm.)

Name: 1) Jacob Goldblatt 2) _____ 3) _____
 Address: 46 Grace Ave.
Great Neck, N.Y. 11021
 Telephone: 516-482-2079
 Date of Separation: March 30, 1976
 Group of Workers Involved: Employees of Gotham Fifth Avenue Inc.

If the petition is being filed by a worker representative, give the capacity in which the petitioner is filing, e.g., union local president, corporate treasurer. corporate treasurer

- II. List the name and address of the firm and each subdivision of the firm at which the workers for whom this petition is filed are (were) employed.

Gotham Fifth Avenue Inc. 120 Fifth Ave. New York, N.Y. 10011

- III. State the name, address, telephone number and title of an official of the firm. (The official should be someone knowledgeable about the firm's production, sales and employment.)

Jacob Goldblatt, Pres. Treasurer
46 Grace Ave.
Great Neck, N.Y. 11021 516-482-2079

- IV. State the date on which separations due to increased imports began and continued, or are scheduled to begin, and the approximate number of workers affected. (List this information separately for each subdivision of the firm listed in II.)

September 1975. 3 workers

- V. Give a description of the articles produced by the firm, the sales or production of which are being adversely affected by increased imports, and a description of the imported articles concerned. (Include such information as the common and technical names of the articles, the method of manufacture, the end uses and the wholesale or retail value of the articles.)

Men's suits, sport coats, slacks.

Imported articles: Men's suits, sport coats, slacks.

- VI. State the reasons for believing increased imports have contributed importantly to a decline in the sales or production of the firm or a subdivision of the firm and to the workers' actual or threatened loss of employment. (Attach any supporting documents such as statements by officials of the firm or newspaper articles.)

Imported clothing are being sold in New York City at much lower prices than comparative clothing made domestically. Gotham Fifth Avenue Inc. could not successfully compete with those firms selling primarily or exclusively imported men's clothing. Sales declined and the firm was compelled to liquidate its business on March 30, 1976.

This petition must be signed below by three workers of the firm or by their duly authorized representative.

I (we) hereby affirm that the information included in this petition is correct to the best of my (our) knowledge and belief.

Signed Jacob Goldblatt

Date: September 23, 1976

TRADE ADJUSTMENT ASSISTANCE
INVESTIGATIVE REPORT
WORKER INVESTIGATION TA-W-1176

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Petition Investigator: Stanley Sacks

Date of Receipt of Petition: October 14, 1976

Date of Field Investigation: by phone October 22, 1976 and
October 26, 1976.

On October 14, 1976, the Office of Trade Adjustment Assistance received a petition filed under Section 221(a) of the Trade Act of 1974 on behalf of workers and formers involved in the production of men's suits and sportcoats at Gotham Fifth Ave., Inc., New York, New York.

I. Company Report^{1/}

A. Company Organization

Gotham started in business in August, 1944 with Mr. Goldblatt joining the firm in November, 1944. In 1949, Mr. Goldblatt acquired a fifty percent interest in the firm. Gotham's plant was located at 125 Fifth Avenue, New York, N. Y. and remained at this location until liquidated in March 1976. Mr. Goldblatt's partner died in February, 1969 and he subsequently bought out his partner's interest and became sole owner in 1970.

In July 1975, Mr. Goldblatt filed a petition for a Chapter 11 bankruptcy in the Southern District Court of New York, Foley Square, New York, N. Y. No receiver was appointed and Mr. Goldblatt continued to run the business in order to satisfy the claims of his creditors. In February 1976, Mr. Goldblatt sold all of his stock in the company to DSLH Enterprises, 485 Madison Ave., New York, N.Y., a company specializing in business liquidations, and he continued to work for DSLH Enterprises until the creditors settled and the business was liquidated in March 1976.

^{1/} All of the following information was obtained in a telephone conversation with Mr. Jacob Goldblatt, President-Treasurer of Gotham Fifth Ave., Inc. on October 22, 1976.

B. Products

Until early 1975 Gotham was a manufacturer of men's suits and sportcoats. These were made primarily from wool and wool and dacron blend fabrics. The company did not manufacture any suits or sportcoats made from double knit fabrics nor did they manufacture any leisure suits. The wholesale prices of suits and sportcoats were \$100 and \$50, respectively. Retail prices were \$165 and \$85, respectively. The petition incorrectly states that slacks were also produced.

C. Production

Gotham did not have a complete manufacturing plant. They only did the cutting of material for suits and sportcoats. All sewing was contracted out to others as follows:

- (1) Pants- A. Eckhauss, 19 W. 44th St., New York, N. Y.
- (2) Coats- Catania Clothing (TA-W-291), 85 5th Ave.,
New York, N. Y.
- (3) Coats-Primo Coat (TA-W-283), 85, 5th Ave., New York, N.Y.

Gotham stopped manufacturing early in 1975 and purchased suits and sportcoats for retail sale primarily from L. Greif and Bros. (TA-W-192), Baltimore, Md., They had been buying suits and sportcoats from L. Greif and Bros. for retail sale for many years. In addition, they also bought double knit suits and leisure suits for retail sale from other domestic manufacturers.

D. Employment

Throughout Gotham's history it had, at most ten employees. When it was manufacturing, it never employed, at any one time, more than one or two cutters. After it ceased manufacturing in early 1975, it employed a bookkeeper and tailor, as needed, to

assist in the retail sale of purchased suits and sportcoats. Mr. Goldblatt could not furnish the names, addresses or telephone numbers of these two employees.

E. Customers

Gotham had no customers other than individual consumers.

F. Records

Mr. Goldblatt has no records of Gotham's business operations other than the bankruptcy proceedings. He believes that either his accountant or the liquidator has the company records.

G. Principals

Mr. Goldblatt supplied the names, addresses and phone numbers of his accountant, lawyer and the liquidator appended hereto as Appendix A.

II. Statements by Principals and Others

A. Mr. Sidney Rieger, Accountant, October 22, 1976

Mr. Rieger stated that he was Gotham's accountant since 1944. He has none of Gotham's records and assumes that they are in the hands of the liquidator. He agreed to supply additional written information on his own stationary pertaining to Gotham's business operations. This statement is appended as Appendix B.

B. Mr. Harold Young, Attorney, October 26, 1976

Mr. Young was the attorney who handled the Chapter 11 bankruptcy for Gotham. He affirmed that the bankruptcy was filed in July 1975 and that the case docket number was 75B 1298. As far as he knew, Gotham had no employees at that time. He also stated that Mr. Goldblatt sold all of his stock in Gotham to the liquidator on February 25, 1976.

C. Mr. Dan Schechtman, Liquidator - October 26, 1976

Mr. Schechtman stated that he purchased Gotham in the latter part of February 1976. Gotham had no production in the year prior to his purchase of the firm. When he took over, there was only one employee on the premises - Mr. Goldblatt. He recalls that Gotham may have had a part-time bookkeeper, but she was dismissed prior to his acquisition of Gotham. He also stated that the liquidation took only about a month and ended in March 1976.

E. Ms. Marie Martin, deputy court clerk, October 26, 1976.

Ms. Martin stated that the Gotham Chapter 11 bankruptcy was filed on July 21, 1975 and the case was closed in June 1976. She stated the bankruptcy petition contained the following statement as to the type of business Gotham was in -- "sale of men's clothing at retail." The petition contained no reference to Gotham's employees.

III. Appendix A - Principals and Others

(1)

Mr. Sidney Rieger, Accountant
6 Frontier Rd.
Cos Cob, CN 06807

203-869-5090

Accountant for Gotham Fifth Ave., Inc.

(2)

Mr. Harold Young, Attorney
Horbath and Young
450 7th Ave.
N. Y., N.Y. 10001

212-PE-6-7070

Attorney in Chapter ~~11~~¹¹ Bankruptcy of Gotham Fifth Ave., Inc.

(3)

Mr. Dan Schechtman
DSLH Enterprises
485 Madison Ave.
N. Y., N. Y. 10022

212-832-2926

Purchaser and liquidator of Gotham Fifth Ave., Inc.

(4)

Ms. Marie Martin, Deputy Clerk
Southern District Court of New York
Foley Square
New York, New York

BUSINESS CONFIDENTIAL

212-791-0163

Court of jurisdiction of Chapter ~~11~~¹¹ bankruptcy of Gotham Fifth Ave., Inc.

SIDNEY S. RIEGER

Certified Public Accountant (N.Y.)

SIX FRONTIER ROAD
COS COB, CONNECTICUT 06807

203 / 859 5090

MEMBER
NEW YORK STATE SOCIETY
CERTIFIED PUBLIC ACCOUNTANTS

October 20th, 1976

Mr. Stanley Fuchs
U.S. Department of Labor
Internal Labor Affairs Bureau
100 Constitution Avenue, N.E.
Washington, D. C. 20210

BEST COPY AVAILABLE

Re Gotham Fifth Ave. Inc.

Dear Sir:

Pursuant to our recent telephone conversation, I am setting forth below the information requested. Since I no longer have access to the records of Gotham Fifth Ave. Inc., I have been able to gather the data from various work papers contained in my accounting files.

1) The last employees of the company were:

Jacob Goldblatt	Terminated March 20th, 1976
Fay Page	Terminated February 27th, 1976

2) Manufacturing of men's clothing was phased out approximately November and December of 1974. With the continued influx of garments from overseas, manufacturing became costly and uncompetitive, and while not abruptly terminated was rapidly phased to a close.

3) A liquidator was asked to acquire the capital stock of Gotham Fifth Ave. Inc. and the following dates are pertinent:

Letter of contract to acquire stock
Delivery of stock subject to court
approval
Court approval
Stock delivered and received

BUSINESS CONFIDENTIAL - 20, 1975

July 20th, 1976
February 27th, 1976
March 20th, 1976

I believe that you have received all of the information which you sought. Please advise me if further assistance is required.

Very truly yours,

U.S. DEPARTMENT OF LABOR
BUREAU OF INTERNATIONAL LABOR AFFAIRS

WASHINGTON, D. C. 20310

Date:

11/18/76

Reply to
Action of:

Subject:

Trade Act of 1974, Worker Petition for Certification of
Eligibility to Apply for Adjustment Assistance, Gotham
Fifth Ave., Inc., New York, New York [TA-W-1176]



Certifying Officer

I. Recommendation

In accordance with 29 CFR 90.15 and the criteria set forth in Section 222 of the Trade Act of 1974, it is recommended that workers of Gotham Fifth Avenue, Incorporated, New York, New York be denied eligibility to apply for worker adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

This recommendation is based upon the following finding:

1. All manufacturing operations at Gotham ceased in early 1975. All separations associated with the termination of production occurred by March 1975, more than one year prior to the date of the petition (September 23, 1976). Those workers separated as a result of the termination of production are thus ineligible to apply for trade adjustment assistance under Section 223 (b) (1) of the Trade Act of 1974.
2. From early 1975 until the company closed in March 1976, Gotham Fifth Avenue was engaged solely in a service, the retail sale of men's suits and sportcoats.
3. Gotham Fifth Avenue, Inc. does not produce an article within the meaning of Section 222(3) of the Act.

File Copy

11/18/76

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II. Worker Petition and Labor Department Notice of Investigation

On October 14, 1976, the Office of Trade Adjustment Assistance received a petition filed under Section 221(a) of the Trade Act of 1974 by former workers producing men's suits, sportcoats and slacks at Gotham Fifth Avenue, Incorporated, New York, New York.

On October 14, 1976 the Director of the Office of Trade Adjustment Assistance issued a Notice of Investigation (41 FR 48809) including a provision that interested parties may request the Department to hold a public hearing on the subject of investigation not later than ten days after the Notice is published in the Federal Register. No request was received. During the course of the investigation, official notice was taken of the information provided by Gotham Fifth Avenue, Incorporated and Department files. The recommendation is based on the entire record and the following findings of fact.

III. Findings of the Investigation

Gotham Fifth Avenue commenced business in 1944. Until early 1975 Gotham was a manufacturer of men's suits and sportcoats; employees at Gotham cut the material and then all sewing was contracted out to other manufacturers.

In early 1975 all manufacturing operations at Gotham ceased. All separations associated with the termination of production occurred by March 1975, more than one year prior to the date of the petition (September 23, 1976). Those workers separated as a result of the termination of production are thus ineligible to apply for trade adjustment assistance under Section 223 (b) (1) of the Trade Act of 1974.

From early 1975 until its liquidation in March 1976, Gotham purchased men's suits and sportcoats from another manufacturer and sold them at retail. All employees of Gotham during that period were engaged in sales at the retail level and performed no production operations. Gotham Fifth Avenue performed a service, the retail selling of men's suits and sportcoats.

IV. Discussion and Conclusion

The Department has already determined that the performance of services is not included within the term "articles" as used in Section 222(3) of the Act. * The facts obtained in the investigation of this petition clearly show that Gotham Fifth Avenue performed a service, the retail selling of men's suits and sportcoats.

*See memorandum of Recommendation, November 17, 1975 in San American World Airways, 1974-1975.

Gotham Fifth Avenue, Incorporated, New York, New York, is not involved in the production of an article within the meaning of section 222(3) of the Act. The petition should, therefore, be denied.

MARVIN M. FOOKS
Director, Office of
Trade Adjustment Assistance

I concur, accept, and adopt the findings of fact and recommendation as set forth herein, except as noted below.

Exceptions:

DEPARTMENT OF LABOR
Office of the Secretary
[TA-W-1176]

33 11/17/76
11/18/76
11/19/76

GOTHEAM FIFTH AVENUE, INCORPORATED
NEW YORK, NEW, YORK

Notice of Negative Determination Regarding Eligibility
to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1176: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 14, 1976 in response to a worker petition received on October 14, 1976 which was filed on behalf of workers and former workers producing men's suits and sportcoats at Gotham Fifth Avenue, Incorporated, New York, New York.

The Notice of Investigation was published in the Federal Register on November 5, 1976 (41 FR 48809). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Gotham Fifth Avenue, Incorporated and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

- (1) that a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,
- (2) that sales or production, or both, of such firm or subdivision have decreased absolutely, and
- (3) that articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and
- (4) that such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production.

The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

If any of the above criteria is not satisfied, a negative determination must be made.

Gotham was a manufacturer of men's suits and sportcoats until early 1975. In early 1975 all manufacturing operations at Gotham ceased. Section 223(b) (1) of the Trade Act of 1974 states that a certification under this section shall not apply to any worker whose last total or partial separation from the firm or appropriate subdivision of the firm occurred more than twelve months before the date of the filing under Title II, Chapter 2 of the Trade Act of 1974.

All separations associated with the termination of production at Gotham occurred more than one year prior to the date of the petition (September 23, 1976).

Those workers separated as a result of the termination of production are not eligible for program benefits under Title II, Chapter 2, Subchapter B of the Trade Act of 1974.

From early 1975 until its liquidation in March 1976, Gotham purchased men's suits and sportcoats from another manufacturer and sold them at retail. All employees of Gotham during that period were engaged in sales at the retail level and performed no production operations.

Gotham Fifth Avenue does not produce an article within the meaning of Section 222(3) of the Act and the Department has already determined that the performance of services are not covered by the adjustment assistance program. See Notice of Determination in Pan American World Airways, Incorporated (TA-W-153, ^{4C}~~50~~ FR 54639). Gotham Fifth Avenue performed a service, the retail selling of men's suits and sportcoats.

Conclusion

After careful review of the issues, I have determined that services of the kind provided by Gotham Fifth Avenue, Incorporated, New York, New York are not "articles" within the meaning of Section 222(3) of the Trade Act of 1974. The petition for trade adjustment assistance is, therefore, denied.

Signed at Washington, D.C. this 30th day of November 1976.

CERTIFYING OFFICER
JAMES F. TAYLOR

46 Grace Ave.
Great Neck, N.Y. 11021
February 1, 1977.

Donald A. Shire, Associate Solicitor
U.S. Department of Labor
Office of The Solicitor
Washington, D.C. 20210

Re: Jacob Goldblatt v. Secretary of Labor No. 77-4010

Dear Mr. Shire:

I would like to call your attention to some of the inaccuracies in your investigative report contained in the record that you have submitted to the United States Court of Appeals for the Second Circuit. The following correct versions of the facts should be substituted for the inaccuracies:

Page 1 - Company report - Gotham was located at 125 Fifth Ave. New York, N.Y. in 1949. It moved to 120 Fifth Ave. in 1951, where it remained until March 30, 1976.

In the second paragraph on the same page- I sold my shares of stock in Gotham Fifth Ave., Inc. to DSLH. Enterprises, which continued to operate Gotham until the business was liquidated. I continued to work for Gotham, and was paid by Gotham. At no time was I employed by DSLH.

On page 3 of the report you state: "Mr. Goldblatt could not state the names, addresses, or telephone numbers of these two employees". That is inaccurate. Your investigator called me at home late in the day. He asked me a number of questions and I answered them. I did mention the other employees, but did not have their addresses and phone numbers in front of me. I offered to send that information by mail. Your investigator suggested that he will call me again, and probably meet with me, and that I can supply that information when we speak again. He never called me again, nor did he communicate with me in any other manner.

Will you please make the proper corrections in the record.

I am required to file 8 copies of a joint appendix with the Clerk of The United States Court Of Appeals for the Second Circuit. Will you please advise what parts of the record, you feel, should be included in the joint appendix.

I will appreciate your prompt reply.

Very truly yours,

Jacob Goldblatt
Jacob Goldblatt

46 Grace Ave.
Great Neck, N.Y. 11021
February 22, 1977

Donald A. Shire, Associate Solicitor
U.S. Department of Labor
Office of The Solicitor
Washington, D.C. 20210

Re: Jacob Goldblatt v. Secretary of Labor

No. 77-4010

Dear Mr. Shire:

I wrote to you on February 1, 1977, and pointed out a number of inaccurate statements in the investigative report which is part of the record that you had submitted to Court of Appeals in the above matter. I asked you to correct the record, accordingly.

I also advised you that I am required to file a joint appendix with the clerk of the court, and asked you what portions of the record, you feel, should be included in the joint appendix. To date, I have received no reply from you.

I intend to file my briefs and joint appendix on or before March 10, 1977. In the absence of any communication from you, I shall include the following in the joint appendix: (1) The Petition for Adjustment Assistance, (2) your investigative report, (3) The Notice of the Negative Determination, (4) a copy of my letter of February 1, 1977, and (5) a copy of this letter.

Very truly yours,

Jacob Goldblatt
Jacob Goldblatt

U.S. DEPARTMENT OF LABOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20210



FEB 17 1977

Mr. Jacob Goldblatt
46 Grace Avenue
Great Neck, New York 11021

Re: Jacob Goldblatt v. Secretary of Labor
No. 77-4010

Dear Mr. Goldblatt:

This is to acknowledge your letter of February 1, 1977. With respect to filing the joint appendix, Ms. Christina Cerna of my staff called the Clerk of the Court to find out whether it was necessary to do so in view of the fact that the entire record comprises only 25 pages. The Clerk, however, assured her that it was necessary to file the joint appendix and I would advise you to include all of the record.

With respect to correcting the record, I am afraid that we are unable to do so since the record has already been filed with the Court, and it was that record on which the Secretary's determination was based.

Sincerely,

Donald S. Shire

Donald S. Shire, Associate Solicitor
Division of General Legal Services

46 Grace Ave.
Great Neck, N.Y. 11021
February 23, 1977

Donald A. Shire, Associate Solicitor
U.S. Department of Labor
Office of The Solicitor
Washington D.C. 20210

Re: Jacob Goldblatt v. Secretary of Labor

No: 77-4010

Dear Mr. Shire:

I received your letter of February 17, after I had mailed my second letter to you.

I believe that by including the parts of the record in the joint appendix, as I have outlined in my letter of February 22, we will sufficiently meet the requirements of Rule 30 of the Rules of Appellate Procedure. Duplicating the entire record will serve no purpose other than to add to the cost. The inclusion of my letter, of February 1, 1977 in the appendix, will serve to correct the record, since you are unable to do so.

I will appreciate your prompt reply, agreeing with my suggestions, so that I can proceed to prepare the joint appendix.

Sincerely,

Jacob Goldblatt
Jacob Goldblatt

U.S. DEPARTMENT OF LABOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20210



March 2, 1977

Mr. Jacob Goldblatt
46 Grace Avenue
Great Neck, New York 11021

Re: Jacob Goldblatt v. Secretary of Labor
No. 77-4010

Dear Mr. Goldblatt:

This is in response to your letters to Mr. Shire
of February 22 and 23.

In addition to the materials listed in your letter
of February 22, we would ask that you include the
Memorandum of Recommendation in the Joint Appendix.
If you have any questions, please call me at
(202) 523-8204.

Sincerely,


John R. Garson
Counsel for International Affairs
General Legal Services